REMARKS

I. Formalities

Claims 1-16 and 29-40 are in the subject patent application. Claims 1, 13 and 29 are amended to clarify the invention, and claim 17 is cancelled without prejudice. Additionally, new claims 39-40 are added to clarify and further scope the invention. New claims 39-40 are fully supported by the Specification. Support for the new claims 39-40 can be found at least in paragraphs 011-015 and FIGs. 1 and 2. Applicants respectfully submit that no new matter is added herein.

II. Response to the 35 U.S.C. §103 Rejections

Claims 1-17 and 29-38 were rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Patent Publication No. 2002/0184148 to Kahn et al. (hereinafter "Kahn") in view of U.S. Patent Publication No. 2002/0049617 to Lencki et al. (hereinafter "Lencki"). Claim 17 is cancelled herein so the rejection of claim 17 is moot. The remaining portion of this rejection is respectfully traversed in view of the comments hereinbelow.

Remarks Directed to Claim 1

Claim 1, as amended, requires, in part, "calculating the direct contribution amount to the accruable health spending account compliant with Section 105 of Internal Revenue Code of 1986 by subtracting either the selection allocation or the option cost from the defined contribution amount." The combination of Kahn and Lencki fail to disclose or suggest this step.

Applicant agrees with the Examiner that Kahn does not disclose this step. However, Applicant respectively disagree with the Examiner's argument that Lencki teaches (in paragraphs 081-086 on page 4) calculating the direct contribution amount to a accruable health spending account compliant with Section 105 of Internal Revenue Code of 1986 by subtracting either the selection allocation or the option cost from the defined contribution amount, as required by amended claim 1. (Detailed Office Action 03/13/2006, page 2, cipher A). Lencki teaches a health

care benefits system where the employer contributes a specific dollar amount and where the employee is allowed to select benefits and options from the benefits package categories 20, shown in FIG. 2. Allocating a portion of the contribution by the employer to an accruable health spending account compliant with Section 105 of Internal Revenue Code of 1986 is not one of the benefits package categories 20. Kahn does disclose using a FSA (flexible spending account) to reimburse medical expenses, but FSAs are not compliant with Section 105 of Internal Revenue Code of 1986 and not accruable. The limitations of FSAs are discussed in paragraph 5 of Applicant's Specification and are incorporated herein by reference. Nowhere within the four corners of Lencki is a method taught or suggested of calculating a contribution amount to an accruable health spending account compliant with Section 105 of Internal Revenue Code of 1986 by subtracting either the selection allocation or the option cost from the defined contribution amount., as required by claim 1.

In light of the foregoing remarks, Applicants respectfully submit that Kahn and Lenski, either alone or in combination, do not make obvious amended independent claim 1, and that the rejection of independent claim 1 is overcome. Applicants therefore respectfully request that amended independent claim 1 be allowed.

A. <u>Remarks Directed to Claim 2-16</u>

Claim 2-16 depend, directly or indirectly, on independent claim 1. Dependent claims must be construed to include all of the limitations of the claims from which they depend, as required by 37 C.F.R. 1.75(c) and M.P.E.P. 608.01(n). The deficiencies of the combination of Kahn and Lencki in relation to claim 1 are discussed supra. Therefore, claims 2-16, which depend from independent claim 1, are also not anticipated or rendered obvious by the combination of Kahn and Lencki for at least the same reasons as listed earlier for claim 1, as well as their own limitations, and should also be allowed for at least those same reasons.

Additionally, claim 14 requires, in part, "transferring a first amount from an employer funded account to the accruable health spending account for the member, the first amount substantially equivalent to the directed contribution amount determined in said determining step." As discussed above, neither Kahn nor Lencki discloses or suggests an accruable health spending account for a member and thus cannot teach transferring a first amount from an

employer funded account to the accruable health spending account. Thus, claim 14 is therefore further allowable for at least this additional reason.

Furthermore, claim 15 requires, in part, "withdrawing a sum from the accruable health spending account to reimburse the member for a medical expense." As discussed above, neither Kahn nor Lencki disclose or suggest an accruable health spending account, compliant with Section 105 of Internal Revenue Code of 1986, for a member and thus cannot teach withdrawing a sum from the accruable health spending account to reimburse the member for a medical expense. Thus, claim 15 is therefore further allowable for at least this additional reason.

Moreover, claim 16 requires, in part, "withdrawing a first sum from a flexible spending account to reimburse the member for a medical expense; and withdrawing a second sum from the accruable health spending account to reimburse the member for the medical expense when the first sum is less than the medical expense." The combination of Lencki and Kahn do not teach or suggest withdrawing a first sum from a flexible spending account and withdrawing a second sum from the accruable health spending account. Kahn does disclose using a FSA (flexible spending account) to reimburse medical expenses, but FSAs are not compliant with Section 105 of Internal Revenue Code of 1986 and are not accruable. Nowhere within the four corners of Kahn and Lencki is using a combination of a flexible spending account and an accruable spending to reimburse a member for a medical expense disclosed or suggested. Thus, claim 16 is therefore further allowable for at least this additional reason.

B. <u>Remarks Directed to Claim 29</u>

Claim 29, as amended, requires, in part, the step of "establishing an accruable health spending account compliant with Section 105 of Internal Revenue Code of 1986 for the benefit of the employee; reimbursing the employee for qualified medical expenses incurred during a first accounting period by debiting the accruable health spending account." Kahn does not teach or suggest establishing an accruable health spending account compliant with Section 105 of Internal

Revenue Code of 1986 or reimbursing the employee for qualified medical expenses by debiting the accruable health spending account.

The Examiner argues that paragraph 0136 on page 7 of Kahn teaches establishing an accruable health spending account (Detailed Office Action 03/13/2006, page 8, cipher Q). However, paragraph 0136 teaches what type of employer data is stored by the payroll system. Kahn states the system saves information about the employer including address information, bank information, paid time off policies, holiday information, etc. Nowhere within the four corners of Kahn is an accruable health spending accounts compliant with Section 105 of Internal Revenue Code of 1986 taught or suggested.

The Examiner also alleges Kahn teaches reimbursing the employee for qualified medical expenses incurred during a first account period by debiting the accruable health spending account in paragraphs 333-334 on page 22 (Detailed Office Action, dated 03/13/2006, page 8, cipher Q). However, Kahn teaches a system that allows payroll deductions to third-party payees, who are not benefit providers, in paragraphs 333-334 on page 22. Nowhere does Kahn even mention accruable health spending account compliant with Section 105 of Internal Revenue Code of 1986 or teach paying qualified medical expenses incurred during a first account period by debiting the accruable health spending account.

Lencki does not provide the missing teaching of Kahn. Lencki teaches a method of offering benefits to a user for purchase. Nowhere does Lencki disclose or suggest establishing an accruable health spending account compliant with Section 105 of Internal Revenue Code of 1986 or reimbursing an employer for qualified medical expenses from the accruable health spending account compliant with Section 105 of Internal Revenue Code of 1986, as required by amended claim 29.

Furthermore, claim 29 requires, in part, "carrying forward any unused balance in the accruable health spending account for reimbursing the employee for qualified medical expenses during subsequent accounting period." Applicant agrees with the Examiner that Kahn does not disclose this step.

However, Applicant respectively disagree with the Examiner that Lencki teaches carrying forward any unused balance in an accruable health spending account for reimbursing the employee for qualified medical expenses during subsequent accounting period. Lencki teaches allowing a user

to distribute a specific dollar allowance 12, an employee contributed amount and an allocation from a good health bonus to paying for a minimum benefits package (health, dental, 401(K), etc.) and supplemental products (personalized wellness services, health library services 3, customized disease management programs 4, etc) (FIG. 1; page 4, paragraphs 81-83). Nowhere with in the four corners of Lencki is the feature of carrying forward any unused balance in the accruable health spending account for reimbursing the employee for qualified medical expenses during subsequent accounting period disclosed or suggested, where the accruable health spending account is compliant with Section 105 of the Internal Revenue Code of 1986.

In light of the foregoing remarks, Applicants respectfully submit that Kahn and Lenski, either alone or in combination, do not make obvious amended independent claim 29, and that the rejection of amended independent claim 29 is overcome. Applicants therefore respectfully request that amended independent claim 29 be allowed.

C. Remarks Directed to Claim 30-38

Claim 30-38 depend, directly or indirectly on independent claim 29. Dependent claims must be construed to include all of the limitations of the claims from which they depend, as required by 37 C.F.R. 1.75(c) and M.P.E.P. 608.01(n). The deficiencies of the combination of Kahn and Lencki in relation to claim 29 are discussed supra. Therefore, claims 30-38, which depend from independent claim 29, are also not anticipated or rendered obvious by the combination of Kahn and Lencki for at least the same reasons as listed earlier for claim 29, as well as their own limitations, and should also be allowed for at least those same reasons.

Additionally, claim 30 requires, in part, "upon the employee moving to a new employer, establishing a new accruable health spending account associated with the new employer for the benefit of the employee; and transferring any unused balance in the accruable health spending account to the new accruable health spending account so that the account is portable." Neither Kahn nor Lencki teach this feature. Applicant respectively disagree with the Examiner that Lencki teaches these features in paragraphs 081-086 on page 4. (Detailed Office Action 03/13/2006, page 9, cipher R). Lencki teaches a health care benefits system where the employer contributes a specific dollar amount and where the employee is allowed to select benefits and options from the benefits

package categories 20, shown in FIG. 2. Allocating a portion of the contribution by the employer to an accruable health spending account compliant with Section 105 of Internal Revenue Code of 1986 is not one of the benefits package categories 20. Kahn does disclose using a FSA (flexible spending account) to reimburse medical expenses, but FSAs are not compliant with Section 105 of Internal Revenue Code of 1986 and are not accruable. Nowhere within the four corners of Lencki is a method mentioned, taught or suggested of upon the employee moving to a new employer, establishing a new accruable health spending account associated with the new employer for the benefit of the employee; and transferring any unused balance in the accruable health spending account to the new accruable health spending account so that the account is portable, as required by claim 30. As a result, claim 30 is further allowable for at least these additional reasons.

Claim 31 requires, in part, "crediting to the accruable health spending account a directed contribution amount equal to the defined contribution less the portion allocated for payment of the premium charge." Applicant respectively disagree with the Examiner that Lencki teaches these features in paragraphs 081-086 on page 4. (Detailed Office Action 03/13/2006, page 9, cipher S). As discussed above, Lencki does not teach accruable health spending account and thus cannot teach crediting to the accruable health spending account a directed contribution amount equal to the defined contribution less the portion allocated for payment of the premium charge. Kahn does not provide the missing teachings of Lencki. Thus, claim 31 is therefore further allowable for at least these additional reasons.

Claim 37 requires, in part, "wherein debiting the accruable health spending account comprises the use of a debit card or credit card associated with the accruable health spending account." Applicant respectively disagree with the Examiner that Kahn teaches these features in paragraph 0437 on page 28 (Detailed Office Action 03/13/2006, page 12, cipher Y). Kahn teaches a system that allows the Employer to provide fund to cover the Employer's payroll. Nowhere within the four corners of Kahn is there a teaching that debiting the accruable health spending account comprises the use of a debit card or credit card associated with the accruable health spending account, where the accruable health spending account is compliant with Section 105 of Internal Revenue Code of 1986. Lencki does not provide the missing teachings of Kahn. Thus, claim 37 is therefore further allowable for at least these additional reasons.

Claim 38 requires, in part, "[t]he accruable health spending account is not individually funded but instead is associated with a pooled fund maintained by the employer." Applicant respectively disagree with the Examiner that Kahn teaches these features in paragraph 0437 on page 28 (Detailed Office Action 03/13/2006, page 12, cipher Y). Kahn teaches a system where the Employer's bank can transmit a wire to a bank to cover the payroll. Nowhere within the four corners of Kahn does it teach that the accruable health spending account is not individually funded but instead is associated with a pooled fund maintained by the employer, where the accruable health spending account is compliant with Section 105 of Internal Revenue Code of 1986. Lencki does not provide the missing teachings of Kahn of associating the accruable health spending account with a pooled fund maintained by the employer. Thus, claim 38 is therefore further allowable for at least these additional reasons.

III. Remarks Regarding the New Claims

New claims 39-40 are fully supported by the Specification. Support for the new claims can be found at least in paragraphs 011-015 and FIGs. 1 and 2. Accordingly, Applicants respectfully submit that no new matter is added herein. Applicants further respectfully submit that Kahn, Lenski, and the combination of Kahn and Lenski fail to show, disclose, teach, or suggest the limitations of either of these two new claims.

More specifically, Kahn, Lenski, and the combination of Kahn and Lenski fail to show, disclose, teach, or suggest in claim 39: (1) using input regarding the member to determine a dollar amount the employer will contribute from the defined contribution amount to a cost for each insurance option selection received for the member; (2) calculating a contribution amount to be paid by the employer to an accruable health spending account complaint with section 105 of the Internal Revenue Code of 1986 by subtracting from the defined contribution amount the dollar amount of the contribution of the employer to each insurance option selection received for the member; or (3) transferring the calculated contribution amount to the accruable health spending account complaint with section 105 of the Internal Revenue Code of 1986 for the member.

Kahn, Lenski, and the combination of Kahn and Lenski fail to show, disclose, teach, or suggest in claim 40: (1) establishing an accruable health spending account, complaint with section

105 of the Internal Revenue Code of 1986, for the benefit of the member; (2) determining a directed contribution amount to be paid by the employer to the accruable health spending account for the benefit of the member; (3) transferring a first amount from an employer-funded account to the accruable health spending account for the member, the first amount substantially equivalent to the directed contribution amount; (4) withdrawing a second sum from the accruable health spending account to reimburse the member for a remainder of the medical expense when the first sum is less than the medical expense; and (5) carrying forward any unused balance in the accruable health spending account for reimbursing the member for qualified medical expenses incurred during a subsequent accounting period.

New claims 39-40 are allowable for at least the foregoing reasons. Accordingly, Applicants respectfully request that the new claims 39-40 be allowed.

CONCLUSION

Applicants have made an earnest attempt to place this case in condition for allowance. In light of the remarks set forth above, Applicants respectfully request reconsideration and allowance of all of the pending claims.

Submitted herewith is check number 2425 in the amount of $50.00 to cover the cost of the extra claim as calculated on the attached Fee Calculation Sheet. However, the Commissioner for Patents is hereby authorized to charge any additional required fees necessitated by this Response to Office Action, or credit any overpayment, to Account No. 02-4467.

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If there are matters that can be discussed by telephone to further the prosecution of this application, Applicants invite Examiner Vanel Frenel to call the undersigned attorney at the Examiner's convenience.

Respectfully submitted,

Dated: June 12, 2006

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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

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